IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI NORTHERN DIVISION

IN RE:

DAVE TATE, SR.

NO. 17-11941 JDW

MOTION FOR RELIEF FROM AUTOMATIC STAY

Comes now Capital One Auto Finance, a Division of Capital One, N.A. (hereinafter "Capital One"), by and through its counsel of record, Byrd & Wiser, and files this its Motion for Relief from Automatic Stay, pursuant to Section 362 of the Bankruptcy Code, and in support of same would show unto the Court the following, to-wit:

I

The Debtor filed his Chapter 13 Petition on or about May 26, 2017.

II

That Capital One is the holder of a secured claim as to certain personal property of the Debtor, namely one (1) 2010 Nissan Altima, VIN 1N4AL2AP8AN479040, all as more fully set forth on Exhibit "A" which is attached hereto and incorporated herein by reference.

III

That Capital One is owed the principal sum of \$23,754.91, exclusive of accumulating late charges and reasonable attorney's fees necessitated by the filing of the instant Motion.

IV

Capital One would show unto the Court that pursuant to the Debtor's Chapter 13 Plan, the Debtor proposes to abandon Capital One's collateral.

V

Capital One would furthermore show unto the court that the Debtor has failed and refused to maintain insurance on the subject matter vehicle duly naming Capital One as lien holder and loss payee as required by the parties' Retail Instalment Contract and Security

BYRD & WISER
ATTORNEYS AT LAW
145 MAIN STREET
P.O. BOX 1939
BILOXI, MISSISSIPPI 39533
TELEPHONE (228) 432-8123
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Agreement.

VI

Adequate cause exists for termination of the Automatic Stay pursuant to Section 362(d) of the Bankruptcy Code as to the Movant, Capital One.

WHEREFORE, premises considered, Capital One would pray that after notice and hearing this Court enter its Order terminating the Automatic Stay of Section 362 of the Bankruptcy Code as to the Movant, Capital One, so as to allow it to pursue its rightful remedies as to its subject matter collateral, and that this Court furthermore enter its Order abandoning the subject matter vehicles as property of the estate, and Capital One furthermore prays that it be awarded its reasonable attorney's fees necessitated by the filing of the instant motion and Capital One prays for such other and further relief as is just and proper in the premises.

Respectfully submitted,

CAPITAL ONE AUTO FINANCE, a Division of Capital One, N.A.

BY: BYRD & WISER

BY:

ROBERT ALAN BYRD

BYRD & WISER
ATTORNEYS AT LAW
145 MAIN STREET
P.O. BOX 1939
BILOXI, MISSISSIPPI 39533
TELEPHONE (228) 432-8123
FAX (228) 432-7029

CERTIFICATE

I, ROBERT ALAN BYRD, Attorney for Capital One Auto Finance, do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the court registered e-filers of CM/ECF and/or via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Relief from Automatic Stay to the following:

William C. Cunningham, Attorney for Debtor, at wccsinc@gmail.com

Terre Vardaman, Trustee, at vardaman13ecf@gmail.com

Office of the U.S. Trustee, at <u>USTPRegion05.JA.ECF@usdoj.gov</u>

WITH A COPY MAILED TO:

Dave Tate, Sr., Debtor 1659 Turkey Creek Road Starkville, MS 39759

This the 2d day of August, 2017.

ROBERT ALAM BYRD

BYRD & WISER
ATTORNEYS AT LAW
145 MAIN STREET
P.O. BOX 1939
BILOXI, MISSISSIPPI 39533
TELEPHONE (228) 432-8123
FAX (228) 432-7029

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dealertrack

title management system Capital One Auto Finance

Search Work Queues Reports Utilities User Setup

Home Help Resources Contact Log out

Perfected

Account

Actions»

LOAN

VIN/HIN: 1N4AL2AP8AN479040

Status: Perfected (PT)

Titling State: MS Year: 2010

Loan:

LoanSuffix:

Branch: 800

Make: NISS ALTI

Model: MA

Overview

Primary customer: TATE, DAVE Secondary customer: TATE, MINNIE

3641

Home phone: 6623416643

Address: 1659 TURKEY CREEK STARKVILLE, MS 39759

Alert when perfected:

Client

CMS

Originator: PLA

App. ID: 9465

User Defined 3: Lienholder Status Code:

Business Unit:

Dealer ID/Name: 37039/CARL HOGAN TOYOTA MS

Recovery type:

Amount Financed: 17384.99 Financed date: 10/21/2013 Booked date: 10/21/2013 Expected payoff date: 10/16/2019

Payoff date:

Perfected date: 11/29/2013

State: MS

Account subtype: Loan (F)

Expected Contract Type:

Customers

	Order	Order	Name	Туре	Home Phone	Business Phone	Address	
<u>Edit</u>	1	•	TATE, DAVE	PERSON	6623416643	6623416643	1659 TURKEY CREEK STARKVILLE, MS, 39759	Delete
<u>Edit</u>	2	•	TATE, MINNIE	PERSON	6623416643	6623416643		Delete

Property

VIN/HIN	Make	Model	Year	Damaged?	Insurance Total Loss?	Account Collateral Type
1N4AL2AP8AN479040	NISS ALTI	MA	2010			VEH

Dealer Info

Name: CARL HOGAN TOYOTA MS

Address: 3907 HIGHWAY 45 NORTH COLUMBUS, MS 39705

Fax: 6622419601

Phone: 6622416000 EMail:

Type: DEALER Status: ACTIVE

Dealership:

Contact Name: JOSH FENSTER Contact Phone: 6622416000

Note:

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Release

Duplicate Title

Request Date:

Action Date:

Status:

Last Worked By:

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State: Required State Forms: Reason Requesting Dept: Operations Code: Billable:	
Follow Up	
Client Activities	
Direct Lending Services	
Additional Documents	
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VIN/HIN: 1N4AL2AP8AN479040 State: MS Title Number:	Title-Held by CMS
Year: 2010 Make/Builder: NISS Model: Batch Number: View Ir	
Overview Classification Classification	
Owner(s): TATE DAVE OR Closed Date: MINNIE TATE Closed Reason:	
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Issuance Date: 11/21/2013 Imported Date: 11/29/2013	
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Owners	
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CAPITAL ONE AUTO FINANCE	
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Notes

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11/29/2013 09:21 AM	System	Client Export	Send Upload File	Sent upload file to Lender.
11/29/2013 09:21 AM	System	Client Export	Send Upload File	Sent upload file to Lender.
11/29/2013 09:21 AM	System	Scan Import	Create Title	Received and scanned paper document.
11/29/2013 09:21 AM	System	Scan Import	Perfect Account	Account and Document were automatically matched.
10/22/2013 07:30 AM	System	Client Import	Create Account	Account created via a Client Import file.

Work Items